

REMARKS

I. The Status of the Application and All Claims

Claims 8-76 are pending.

Claims 40-76 are added by this amendment.

The independent claims are: 8, 9, 10, 11, 15, 16, 17, 22, 27, 30, 33, 34, and 66.

Claim 66 is the only new independent claim.

Claim 40 is multiply dependent on claims 17, 22, 27, 30, 33, and 34.

II. Response Time Limit to New Ground of Rejection

New claim 40 is a multiple dependent claim depending from any one of "claims 17, 22, 27, 30, 33, and 34". It defines the same subject matter as the immediately prior version of claims 17, 22, 27, 30, 33, and 34; the versions originally submitted within 2 months period after the panel decision which imposed a new ground of rejection of claim 33. The purpose of new claim 40 is to ensure that the applicants have complied with the regulatory requirements in response to a panel decision imposing a new ground of rejection. However, this amendment presents additional claims and reasoning in respect of the panel decision.

III. Pending Petition to Re-characterize the Panel's Decision on Claims 17-32

On January 3, 2005, the applicants filed a petition to have that part of the panel's decision characterizing their rejections of claims 17-32 as an affirmance re-characterized as a new ground of rejection. A decision on that petition is pending.

IV. Review and Panel Decision, Addressing Conclusion of Law and Fact of the Panel, and Effect on Ongoing Prosecution

A. Summary of the Panel Decision

The USPTO mailed a panel's decision on the appeal in this application (hereinafter "decision") mailed September 09, 2004

(1) reversing all rejections (including rejections under 35 USC 101, 102, and 103(a)) of claims 8-16 and 33-39;

(2) affirming one rejection under 35 USC 103(a) based upon Creekmore, Off, Tai, and Bigari, of claims 17-32; and

(3) entering a new ground of rejection under 35 USC 012 based upon Creekmore, of claim 33.

Subsequent to the September 09, 2004 decision, on October 07, 2004, the applicant filed an amendment amending independent claims 17, 22, 27, 30, 33, and 34.

B. Comments on the Reversal of the Rejection of Claims 8, 9, 12, and 13 under 35 USC 102 Based upon Creekmore

Regarding the decision's reversal of the 102 rejections based upon Creekmore, the panel found that Creekmore did not disclose that its point-of-use terminal was a terminal for entering transaction data at the point of sale. Decision page 9 lines 4 to page 10 line 13. The panel specifically stated at decision page 9 line 22 to page 10 line 2 that "Firstly, Creekmore's disclosure that the terminal is near the checkout and that the customer goes to the checkout after obtaining check approval makes clear that the terminal is not at the point-of-sale."

In reply, the applicant notes that this statement has *issue preclusive and law of the case effect preclusive effect* in this proceeding. Therefore, no claim defining a terminal for entering transaction data at the point of sale should be rejected under 35 USC 012 based upon Creekmore.

Regarding the decision's statement at page 10 lines 5-14, that the examiner's argument relating to equivalence was improper in rejections based upon 35 USC 012, the applicant notes that Creekmore specifically and unequivocally teaches away from combining its check verification point-of-use terminal with a check-out point-of-sale terminal at column 1 lines 43-56. Thus, the examiner's equivalence argument was in fact legally incorrect. Creekmore specifically teaches away from combining the point-of-use and point-of-sale by identifying the drawbacks of having a store's personnel involved in check verification and the queuing problem at point-of-sale or courtesy desks of a store, at column 1 lines 48-53, stating that:

Telephone verification, as well as the maintenance and manual look-up of check cashing files, bad-check lists, and the like require a substantial amount of time and effort on the part of store personnel, and often cause queuing problems at the check-out lanes or courtesy desk of any stores.

Thus, no rejection for obviousness based upon Creekmore is warranted on the legally untenable theory that a point-of-use suggests a point-of-sale.

The decision states that "Creekmore discloses storing customer data relating to prior transactions, because the number of checks cashed within a particular period and their dollar amounts relates to the customer's prior transactions (col. 7, lines 19-21 and col. 7, lines 64-68 and col. 10, lines 48-56)." Decision page 9 lines 11-15. However, the examiner should carefully distinguish between Creekmore's disclosure of storing check verification data, which Creekmore does disclose, and storing transaction data for customer purchases, which Creekmore does not disclose. Specifically, the examiner should note that Creekmore only discloses storing check verification data. Creekmore does not disclose storing transaction data in which a verified check is actually tendered for payment.

C. Comments on the Reversal of the Rejections of Claims 33-39 under 35 USC 102 Based upon Goldman

The panel stated at decision page 11 lines 5-7 that "we find that Goldman does not disclose that the stored transaction data includes dollar amount of purchases."

The panel relied upon this finding in reversing these rejections, stating at decision page 11 lines 18-20 that "[b]ecause Goldman does not disclose storing the dollar amount of prior transactions in the customer database, we find that Goldman does not anticipate claim 33."

In reply, the applicant notes that the panel's finding has issue preclusive and law of the case preclusive effect to preclude a subsequent contrary determination. Therefore, no claim defining that "the stored transaction data includes dollar amount of purchases" should not be rejected under 35 USC 102 based upon Goldman.

D. Comments on the Reversal of the Rejections of Claims 15 and 16 Under 35 USC 103 as Obvious Based Upon *Creekmore* in View of *Off*

In reversing these rejections, the panel stated at decision page 15 lines 10-15 that "we agree with appellants that Off is not basing the generation of coupons or discounts on previous transactions, but rather on the current transaction."

In reversing these rejections, the panel also stated at decision page 15 lines 15-17 that "[i]n addition, we find that Off does not disclose entering a unique customer identification number into a point-of-sale terminal."

The combination of Creekmore and Off lacks the limitations defined by the recitations in claim 15 of (1) "entering into a point-of-sale terminal a unique identification code for a customer"; (2) "responding to entry, during a current transaction, of said unique identification code of a customer by analyzing said transaction data of a customer, including data in said database from prior transactions"; (3) "supplying said response [based upon the data in the database from prior transactions] to said [point-of-sale] terminal during the current transaction in which said unique customer identification code is entered"; and (4) said response including information for effecting a targeted promotion to the customer.

Thus, any claim having any one of the foregoing four limitations should not be rejected as obvious based upon a combination of Creekmore and Off.

E. Comments on the Reversal of Rejections of Claims 10, 11, and 14 Under 35 USC 103 Based upon *Creekmore*, in View of *Off*, and Further in View of *Tai*

In reversing these rejections, the panel stated at decision page 17 lines 11-17 that "we agree with appellants [citation omitted] that Tai does not disclose generating the customer information response at the point of sale during the customer's transaction upon detection of a unique identification code of the customer...." and at page 17 lines 14-16 that Tai discloses that it "generates the customer response at an earlier time."

In reversing these rejections, the panel also stated at decision page 17 lines 16-19 that "we find that Tai does not disclose or suggest entering a unique customer identification code at the point-of-sale, and thus does not make up for the basic deficiencies of Creekmore and Off.

Thus, any rejection for obviousness based upon Creekmore, Off, and Tai of any claim defining "generating the customer information response at the point of sale during the customer's transaction" or "entering a unique customer identification code at the point-of-sale" would be improper.

F. Comments on the Affirmance of Rejections of Claims 17-32 Under 35 USC 103 Based Upon *Creekmore, Off, Tai, - and Bigari*

1. Facts Relating to the Panel's Decision

The panel indicated that Off and Tai were cumulative to Creekmore and Bigari (decision page 21 lines 12-13), and that the examiner's rationale, relying as it did upon the first embodiment in Bigari, failed to suggest a combination (decision page 19 lines 17-24 and page 20 lines 12-15). However, the panel relied upon its own review of the disclosure in the second embodiment (Figs. 5-8) in Bigari, to suggest modification of Creekmore in view of Bigari. Specifically, the panel stated at decision page 20 line 20 to page 21 line 14 that:

However, although not brought to our attention by either the examiner or appellants, we find that Bigari additionally discloses (col. 9, lines 55-61) that Figures 5 through 8 [sic, 7] disclose an enhanced payment voucher processing apparatus and system wherein the point of purchase register is integrated with the payment voucher processing apparatus 10 (underlining added). From the disclosure that the payment voucher processing apparatus may either be remote from the cash register or integrated with the cash register, we find that an artisan would have been motivated to integrate the check verification terminal of Creekmore integral with the point-of sale terminal, permitting the check approval, based on prior transaction of a customer including the dollar amounts of checks preciously presented, to be sent to the point-of-sale terminal. Accordingly, although we consider Off and Tai to be cumulative to the teachings of Creekmore and Bigari, we find that the teachings of Creekmore and Bigari suggest the limitations of Claim 17. [All emphasis and interpolation in the original.]

Thus, the panel did not affirm the examiner's ground for rejection, but instead introduced its own ground of rejection. In that regard, the applicant has petitioned the Director to clarify that the panel's rejection of claims 17-32 was in fact a new ground of rejection, thereby entitling the examiner to withdraw the rejections in view of the review of the references and reasoning presented below.

2. The Teachings of Bigari

a. The Bigari Credit Voucher Concept

Bigari discloses a system in which the amount of credit to be provided to a customer during a transaction is indeterminate when the voucher is generated, and the voucher merely indicating a maximum amount of credit authorized for the customer. Bigari column 4 lines 25-28 (voucher must be for no more than actual charge amount); column 8 lines 37-43 (decision made at cash register whether purchase amount exceeds voucher amount); column 10 lines 14-33 (if purchase amount less than or equal to voucher amount in transaction processor).

b. Data that Bigari Does Disclose Storing

In summary, Bigari discloses storing in records, the following: transaction ID, maximum pre-approved charge amount, account identification data, and a value correlated to the actual purchase amount.

Bigari discloses that the merchant's computer system stores in association with one another, i.e., in the same data record, the following data: transaction ID, maximum pre-approved charge amount. See column 8 lines 6-14 referring to data stored in the authorization process. Bigari also discloses at column 10 lines 14-19 that, just prior to a purchase transaction, the voucher is read to provide at the point of purchase terminal (1) the account identification data and (2) the maximum amount, and then the customer initiates a purchase transaction, stating that:

When the customer reaches the point of purchase sale, the voucher is inserted in voucher reader 34 and is read, as is shown at 202. This reading of the voucher inputs the account identification data and the maximum charge amount into the cash register processor 32. The customer then initiates a purchase of goods or services at 204 which results in a purchase amount for the transaction.

Bigari at column 10 lines 21-30 that the computer point of purchase system calculates the total purchase, compares the total purchase to the authorized credit maximum amount, and returns to the point of purchase a signal (either to update the printed information on the voucher or to reject an purchase amount above the authorized limit), stating that:

The actual purchase amount is automatically compared by a comparator means with the maximum charge amount as is shown at 206. In the event that the purchase amount is greater than the maximum charge amount, the customer must re-initiate a purchase for a lesser amount than is shown by loop 208. If the purchase amount is less than or equal to the maximum charge amount, the voucher is updated by register printer 38 to index the voucher with the actual purchase amount, as is shown at 212. The purchases in finalized at 214. The merchant retains receipt A at 216 and the customer is given receipt B as is shown at 218.

Finally, Bigari at column 10 lines 35-40 discloses that, the final step in the purchase transaction process is updating the corresponding transaction data to store a value correlated to the actual purchase amount, stating that:

In addition, when the purchase is finalized at 214, the updated transaction information is transmitted, at 220, to microprocessor 12. The microprocessor 12 then automatically retrieves the corresponding transaction, as shown at 222, and, as is shown at 224, microprocessor 12 updates the transaction and stores the updated transaction, at 226; thus, the stored transaction includes the account identification correlated to the actual purchase amount.

Thus, Bigari discloses storing in records, the following: transaction ID, maximum pre-approved charge amount, account identification data, and a value correlated to the actual purchase amount.

c. Data that Bigari Does Not Disclose Storing

Bigari does not disclose storing any date or time data. Instead, Bigari column 10 lines 28-56 refers to updating the customer master file to update customer status based upon the daily log file of transactions.

d. **What Bigari Discloses Transmitting between the Point of Sale Terminal and the Transaction Processor**

Bigari discloses the following sequence.

First, transmitting from a point of purchase to a transaction processor, a credit approval maximum amount and an account identification data (column 10 lines 15-19).

Second, then transmitting from the point of purchase to the transaction processor a transaction total amount. Column 10 lines 19-26.

Third, that, in response, the transaction processor compares the credit approval maximum amount with the transaction total amount and then returns to the point of purchase a signal depending upon which of the foregoing quantities is greater. Column 10 lines 21-30.

e. **The Data That Bigari Discloses Storing at the End of the Purchase Transaction**

Bigari also discloses that, at the end of a purchase transaction, the transaction processor updates the customer record to store in the customer record some value "correlated" to the actual purchase amount. Column 10 lines 35-40.

3. **The Teachings of Creekmore**

a. **Creekmore's Check Verification Based Business Concept**

Creekmore discloses a system in which checks are pre-verified at a point-of-use terminal, so that when they are subsequently presented at a point of sale terminal to pay for goods the customer wants to purchase, the store clerk knows whether to accept the check. The panel decision rightly determined that Creekmore discloses that a point-of-use terminal is remote from and not equivalent to a point-of-sale terminal.

Unlike Bigari's system, Creekmore's system provides for unconditional credit to customers, based upon checks. Once a customer's check is verified, the merchant can unconditionally accept it. See Creekmore abstract last sentence (merchant accepts checks verified by the system); column 2 lines 27-30 (system designed for factoring of verified checks); column 3 lines 12-19 (checks within authorization limits verified). In addition, Creekmore discloses the system designed to pass risk of loss to the factoring agency once a check has been

verified. Column 12 lines 27-43. Moreover, Creekmore expressly indicates that a merchant can accept a pre-verified check presented at the merchant's point of sale terminal "knowing that he will be paid ... should the check default." Column 12 lines 35-38. Thus, Creekmore teaches no need for the merchant to check the credit worthiness of the check presented at the point of sale. As a consequence, Creekmore does not disclose or suggest including Bigari's step of comparing voucher amount to purchase amount.

b. Data that Creekmore Does Disclose Storing

Creekmore discloses that a customer record specifically includes (see column 4 and figure 4) the following fields:

customer specified conditions fields, referred to as "check functions" (e.g., purchase amount, purchase amount plus cash, payroll, social security)(column 41 lines 10-26 and column 8 lines 24-26);

personal code (column 4 line 23);

authorization status (column 7 lines 64-65);

wrong personal code entered counter (column 7 lines 40-41);

maximum number of checks (column 8 lines 6-12);

number of checks accepted before the log is cleared (column 8 lines 41-49).

The authorization status (column 7 lines 64-65, and the rest of the paragraph bridging columns 7 and 8) is information used to determine whether to refuse at the verification terminal, authorizing a check, and thereby not print authorization data on the check. This data cannot logically be used for any purpose at the point of sale terminal. Thus, Creekmore teaches no stored data useful for any purpose if retrieved to the point of sale terminal.

None of these data fields disclosed in Creekmore would be useful for review at the point of sale terminal in connection with tendering of a verified check.

Creekmore also discloses periodic (daily) updating to the customer master file based upon daily transaction logs. Column 10 lines 28-30. Thus, Creekmore discloses that for example the "number of checks accepted" field is updated nightly.

Creekmore does not disclose storing the check amount in a computer based transaction file. Instead, Creekmore discloses *obtaining user input of the check amount* so that the system

can indicate to the user whether the amount is authorized for example being less than predetermined limits. Column 6 lines 60 to column 6 line 2. Creekmore also discloses encoding by printed on the check human readable indicia that includes the amount of the check entered by the customer (column 10 lines 22-28).

c. Data that Creekmore Does Not Disclose Storing

Creekmore does not disclose storing in a transaction record time data, such as time of transaction. Moreover, Creekmore's disclosure that a user or process periodically (daily) updates the customer master file based upon the stored transaction log moots storing time data. Column 10 lines 28-30. Thus, there would be no reason to store time data in Creekmore's database.

Creekmore does not disclose storing in a computer system a transaction record including dollar amount of checks or transactions. In fact, since the checks verified by the system of Creekmore are accounted for by the customer's bank via the banking system, Creekmore's system, unlike Bigari's voucher system (see Bigari column 4 lines 40-51), need not keep track a customer account amount of available customer credit.

4. The Panel's Creekmore/Bigari Combination Is Improper

For the reasons presented below, that new ground of rejection is improper and therefore the rejections of claims 17-32 should be withdrawn. Bigari's inclusion of the payment voucher processing functionality into the point of purchase register does not motivate or suggest "integrating the check verification terminal of Creekmore" into the point of purchase or sale terminal. In summary, this is because:

(a) Bigari and Creekmore both teach away from performing credit verification at the point of purchase.

(b) Bigari's second embodiment, the embodiment relied upon the panel in the rejection of claim 33, does not suggest integrating a *credit verification* terminal into a point of purchase terminal. That is, Bigari's second embodiment does not perform the voucher credit authorization at a point of sale terminal. Instead, it discloses performing *accounting of a verified voucher* at a point of sale terminal.

(c) It would be illogical to incorporate, as the panel suggested, *Creekmore's* check credit verification terminal into *Creekmore's* point of sale terminal, in view of Bigari, or any other teaching. This is at least because Creekmore discloses no point of sale system, and *Creekmore discloses no point of sale terminal*. It instead discloses "*checkout lanes*" of a grocery store. Column 5 lines 18-21; and column 8 lines 57-58.

(d) There is no motivation to modify Creekmore in view of Bigari.

(e) Even combinations of Creekmore and Bigari, while lacking motivation, do not respond to for example claim 17.

(f) Furthermore, neither reference discloses or suggests storing in a transaction record a time or date of transaction, as per claims 29 and 32.

a. **Both Bigari and Creekmore Teach Away from Performing Credit Verification (Voucher or Check) at the Point of Sale**

In fact, both Bigari at column 2 lines 6 to column 3 line9 and Creekmore column 1 lines 43-55) expressly teach away from performing the credit verification function at the point of sale. Both of these references point to the drawback of the attendant delay in processing purchases for a queue of customers as a problem in the prior art addressed by their respective inventions. Thus, any interpretation of an embodiment in either reference resulting in the credit verification function occurring at the point of sale would be contrary to the problem identified and allegedly solved by systems disclosed in these references, and thus an unreasonable interpretation.

b. **Bigari's Second Embodiment Does Not Suggest Integrating a Credit Verification Terminal into a Point of Sale Terminal**

1. **What the Bigari Second Embodiment Teaches**

In its Figs. 5-8 embodiment (herein after "second embodiment"), Bigari does disclose integrating the payment voucher processing apparatus 10 with the point of sale (cash register). However, Bigari just as clearly does not disclose integrating the voucher credit verification terminal with the cash register. That is, Bigari's Fig. 5-8 embodiment also includes a voucher credit verification terminal.

Nothing in Bigari indicates that its Figs. 5-8 embodiment excludes the "payment voucher processing apparatus." Instead, Bigari indicates only that Figs. 5-8 specify an alternative "point of purchase transaction station." If Bigari had intended to entirely exclude the "point of purchase transaction station" from the Figs. 5-8 embodiment, he would not have referred to that embodiment as an alternative "point of purchase transaction station."

Both the "payment voucher processing apparatus" and the "point of purchase transaction station" are identified in the summary of the invention at column 6 lines 14-17 as essential core elements. Moreover, the Brief Description of the Figs. 5-8 embodiment indicates that the Figs. 5-8 embodiment is only directed an alternative of the "point-of-purchase" station. Thus, Bigari does not indicate that Figs. 5-8 represent an alternative to the complete payment voucher apparatus shown in Fig. 1. Thus, the reference in the Brief Description section, by negative inference, would have indicated to one skilled in the art that the Figs. 5-8 embodiment also included the "payment voucher processing apparatus" of the Fig. 1 embodiment.

Furthermore, the Bigari Figs. 5-8 embodiment shows, for example in Fig. 5, that the voucher printer 30 is located distinct from the "point of purchase station 31" (Bigari column 9 line 59; 'point of purchase station', 'point-of-sale terminal', and 'cash register' are for purposes of this discussion synonymous). Fig. 5 also shows the point of purchase station sub-elements, which are shown as 32, 34, 36, 38 include no voucher printer, indicating that vouchers *cannot* be printed at the point of sale. Thus, the Bigari Figs. 5-8 embodiment clearly still includes the "payment voucher processing apparatus," which includes the voucher printer, at a location distinct from the point of purchase station, and at which location credit vouchers are printed. Bigari teaches that credit authorization is the prequel to printing the credit voucher. Clearly, therefore, the Bigari Figs. 5-8 embodiment discloses credit voucher pre-authorization occurring remote from the point of sale at the voucher printer 30, which is where Bigari teaches that the credit vouchers are printed. Basically, what the Bigari second embodiment teaches is machine reading of the voucher's verified credit amount data at the point of sale, and storing that amount in transaction data. Thus, the Bigari Figs. 5-8 embodiment does not suggest that voucher credit verification occurs at the point of sale.

2. **The Panel's Conclusions Based Upon Bigari Do Not Logically Follow From the Teachings of Bigari**

a. **Errors made by the Panel**

The panel's correctly concluded that Bigari discloses that "the payment voucher processing apparatus may either be remote from the cash register or integrated with the cash register." The panel however erred in concluding from this teaching that "an artisan would [therefore] have been motivated to integrate the check verification terminal of Creekmore integral with the point-of sale terminal, permitting [at the POS terminal] the check approval, based on prior transaction of a customer including the dollar amounts of checks preciously presented, to be sent to the point-of-sale terminal."

The panel also erred because Bigari's inclusion of the *voucher processing* function - - accounting for the value of the voucher - -, at the point of sale, does not suggest integrating a credit *verification* function - to determine whether to authorize credit, into a point of sale terminal. In fact, both Creekmore and Bigari teach away from incorporating the credit verification function into the point of sale! The express teachings in the background sections of both references are to avoid credit verification at the point of sale. Thus, the panel's conclusion of motivation to modify is contrary to the express teachings of *both* references. Therefore, the examiner should withdraw the rejections of claims 17-32 based upon Creekmore and Bigari.

c. **It Would Be Illogical to Incorporate, as the Panel Suggested, Creekmore's Check Credit Verification Terminal into Creekmore's Point of Sale Terminal**

Creekmore discloses *no point of sale system*, and Creekmore discloses *no point of sale terminal*. It instead discloses "*checkout lanes*" of a grocery store. Column 5 lines 18-21; and column 8 lines 57-58.

The panel apparently mistook the teachings of Creekmore as disclosing a point of sale terminal, making that incorrect factual conclusion at decision page 20 lines 16-20 (concluding that both Creekmore and Bigari disclose point-of-sale terminals based upon disclosure of point-of-sale terminals in Bigari).

In fact, Creekmore issued from an application *filed in 1975*, at which time the undersigned doubts that point of sale checkout systems existed. Since Creekmore does not disclose a point of sale *terminal*, Bigari cannot logically be motivation to combine Creekmore's credit verification terminal into Creekmore's non-existent point of sale terminal.

d. Any Modification of Creekmore in View of Bigari Is Not Logical and There Is No Objective Motivation for Such a Modification

There is no business reason in Creekmore's system that would suggest comparing a check amount to a purchase amount. Checks, by definition are credit from a third party bank/factoring agency at which the customer has a checking account. Creekmore discloses that checks verified by its system will be unconditionally honored by a factoring agency, so the merchant accepting the check has no risk in doing so. Column 9 lines 53-58.

Furthermore, Creekmore discloses no reason to compare at the point of sale the amount of a check against the amount of a purchase, and therefore no reason to modify Creekmore's system to include in a point of sale terminal functionality to compare check amount against purchase amount. Creekmore's checks are pre-verified for a cash amount prior to the customer reaching the point of sale terminal. Creekmore teaches printing all relevant information on the check, including when applicable check amount entered by the customer during verification.

In summary, Creekmore teaches neither a point of sale terminal nor utility for machine reading the check amount at the point of sale.

Bigari teaches that its computer system compares at the point of sale a voucher maximum amount to a purchase amount because the merchant credit on the voucher is contingent upon the purchase amount being less than or equal to the voucher amount.

No such concern exists in Creekmore's system because (1) Creekmore involves no point of sale terminal or point of sale system and (2) Creekmore's merchant's reimbursement for cashing a verified check is unconditionally guaranteed. In that regard, Creekmore's check based system differs from Bigari's' voucher based system in that checks pass through the banking system to the consumer's account, and the banks take care of the accounting on the customer's account.

In any case, there is no computer stored check amount in Creekmore's system against which to electronically compare a purchase amount, and therefore no reason to modify Creekmore to perform check verification at the point of sale to generate a signal sent to the point of sale relating to check amount, purchase amount, or any combination of the two.

e. **Even a Modification of Creekmore to Incorporate Check Processing Functionality in a Point of Sale Terminal Would Not Result in Certain Claimed Subject Matter**

A modification of Creekmore to incorporate check transaction processing functionality in its point of sale terminal would not result in certain claimed subject matter. Check processing in this context means accounting for the value of the tendered check in transaction data.

Recall that, unlike Creekmore's check related system, Bigari discloses vouchers specifying a maximum amount of credit for customer. Unlike Bigari's system, Creekmore teaches a system in which checks, once verified at a check verification station remote from the point of sale, are subsequently unconditionally accepted as tender at the point of sale terminal. Therefore, there is no motivation to modify Creekmore's system to provide a comparison at the point of sale of the check amount and the purchase amount, similar to the Bigari's signal based upon a purchase/voucher amount comparison, regardless of whether a modification of Creekmore electronically reads the check amount and the purchase amount at the point of sale and electronically stores that information read at the point of sale.

Furthermore, there is no motivation to modify Creekmore's check processing system to provide to the point of sale any signal based upon prior purchases, much less claim 17's "customer information response signal [that] depends upon data stored in said database indicating dollar amount of at least one prior purchase associated with said unique customer identification."

Moreover, the combined teachings of Creekmore and Bigari fail to disclose in a transaction data record storing any time data, such as time of the transaction. Therefore, the proposed modification of Creekmore to include check processing at the point of sale terminal does not suggest the claimed storing of a date of the transaction, per claims 29 and 32.

Now, what Bigari discloses is reading at the point of sale an amount of a voucher and determining whether the value of requested goods is greater or less than the voucher amount. In

addition, Bigari discloses storing the voucher maximum amount and the purchase amount in a customer record. What Creekmore discloses is having a check pre authorized prior to the customer approaching the point of sale terminal. Combining the voucher reading features of Bigari's point of sale terminal with the check verification terminal features of Creekmore would result in a point of sale terminal that could read check amounts, but for no purpose. Remember, that Creekmore's check based system does not rely upon accounting, and therefore need not record the amount of the check in a storage memory. Moreover, since Creekmore's check credit amount is independent of purchase order dollar amount, there is no reason to electronically compare Creekmore's check amount against a customer's order amount. Thus, there is no motivation to modify Creekmore in view of Bigari.

**f. Assuming Arguendo a Combination of Creekmore and Bigari,
Claim 17 is Still Non-Obvious**

Even assuming arguendo the obviousness of combining the voucher reading features of Bigari with the check verification terminal features of Creekmore, such a combination would lack elements defined rejected by claim 17. Claim 17 reads as follows.

17. (Previously presented) A computer implemented system for providing a signal at a point-of-sale depending upon a customer's shopping history, comprising:

- a terminal for entering, during a transaction, a unique customer identification;
- a database local to the point-of-sale storing transaction data from prior transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with an identification of that customer, said database updatable from a global database concatenated from multiple store databases including said transaction data from the prior transactions of the customers at multiple stores;
- circuitry responsive to the entry of said unique customer identification at said terminal during said transaction for transmitting to said point-of-sale during said transaction a customer information response signal; and
- wherein said customer information response signal depends upon data stored in said database indicating dollar amount of at least one prior purchase associated with said unique customer identification.

The proposed combination would lack the following elements:

A system "providing a signal at a point-of-sale *depending upon a customer's shopping history*", because the modified Creekmore system returns no signal based upon prior history since (1) it pre-verifies checks at the point of use terminal.

The "customer information response signal [transmitted to the terminal, that] depends upon data stored in said database indicating dollar amount of at least one prior purchase associated with said unique customer identification" because Creekmore's checks are pre-verified and therefore need no response from Creekmore's system. In this regard, the panel missed a fundamental difference between Creekmore and Bigari. Bigari voucher's are conditional such that they can be rejected at a point of purchase, for example, if they show less credit than the value of the customers goods purchase order. Bigari's vouchers specify an indeterminate amount; any amount up to but not exceeding the maximum amount specified on the voucher.

In contrast, the checks pre-approved by the Creekmore system are unconditionally approved for the amount certain that is specified on them, regardless of the value of goods in the customer's purchase order. While a check can be insufficient tender for a purchase, it is still in Creekmore unconditionally acceptable tender. Thus, a purchaser could for example supplement a check with cash to pay for goods or present a check in an amount exceeding a purchase amount, and get cash back. Hence, there is no reason for the Creekmore system to compare the check value to a purchase amount.

For all of the foregoing reasons, I submit that the panel legally erred in concluding that Creekmore and Bigari suggested, for example, claim 17.

g. **Furthermore, Neither Reference Discloses or Suggests Storing
in a Transaction Record a Time or Date of Transaction, as per
Claims 29 and 32**

In addition, the panel's conclusion that the references discloses storing a time or date is incorrect. The data expressly stored in connection with a customer identification is expressed in each reference; neither reference suggests storing date or time in a customer record.

G. Comments on the Panel's Reversal of Rejections of Claims 10, 11, and 14 for Obviousness-type Double Patenting over Claims 18 and 26 of USP 5,201,010 in View of Tai

The panel reversed the rejections of claims 10,11, and 14 for obviousness-type double patenting over claims 18 and 26 in USP 5,201,010 in view of Tai, stating in relevant part that:

Although we agree with the examiner that Tai's revision of the mailing list in response to a customer's prior transaction (using a coupon that was mailed to the customer) we find that there is no teaching or suggestion in Tai of the response occurring at the point of sale. Accordingly, we find that the teachings of Tai in view of claims 18 and 26 of U.S. Patent No. 5,201,010 is insufficient to establish a prima facie case of obviousness-type double patenting of claims 10, 11 and 14. Accordingly, the rejection of claims 10, 11 and 14 under the judicially created doctrine of double patenting is reversed.

In reply, the applicant notes that the panel's finding has issue preclusive and law of the case preclusive effect to preclude a subsequent contrary determination. The panel found that Tai does not suggest that the response occurs at the point of sale. Therefore, no claim can be properly rejected in reliance upon Tai suggesting that "the response occurring at the point of sale."

H. Comments on the Panel's Reversal of the Rejections of Claims 17-32 for Obviousness-Type Double Patenting over Claims 1 and 3 of USP 5,592,560

In reversing the rejections of Claims 17-32 for Obviousness-Type Double Patenting over claims 1 and 3 of USP 5,592,560, the panel stated in pertinent part that:

Even though the result is that a unique customer number results, there is a big difference between a customer entering a unique customer number, and a system generating a unique customer code at a terminal. We agree with appellants that the terminal of claim 1 of the '560 patent performs a different function than the terminal of claim 17. As the examiner has failed to establish the obviousness of

modifying the system of claims 1 and 3 of the '560 patent to arrive at the invention of claims 17-32, we find that the examiner has failed to establish a prima facie case of obviousness-type double patenting. Accordingly, the rejection of claims 17-32 under the judicially created doctrine of double patenting is reversed.
[Decision page 30 lines 7-20.]

In reply, the applicant notes that the panel's finding has issue preclusive and law of the case preclusive effect to preclude a subsequent contrary determination. The panel found that claims 1 and 3 in USP 5,592,560 did not suggest the terminal for entering a customer identification defined by claims 17-32. Therefore, no claim can be properly rejected in reliance upon USP 5,592,560 claims 1 and 3 or in reliance upon the terminals defined therein corresponding to claims 1 and 3.

I. Comments on the Panel's New Ground of Rejection of Claim 33 as Anticipated by Creekmore

In imposing a new ground of rejection of claim 33 as anticipated based upon Creekmore, the panel stated that:

Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by Creekmore. Creekmore discloses a computer implemented (general purpose digital computer functioning as a transaction processor 19) customer database (check cashing master file 20) comprising stored transaction data from prior point-of-sale transactions (check authorization may be determined by variable factors such as the customer's check cashing history, and the like (col. 8, lines 4-40)). In addition, Creekmore discloses that data regarding prior transactions are stored in association with an identification of the customer (applicant is assigned an account number and is issued a check cashing identification card having a magnetic stripe. The card may include the customer's checking account number, and a driver's license number which is unique to the customer (col. 4, lines 30-47). Transaction processor 19 verifies whether the identification card is valid (col. 6, lines 10-40). In addition, the transaction data includes dollar amount of purchases and the time

period (the customer supplies the dollar amount of the check being presented (col. 3, lines 9 and 10; col. 11, lines 11-14); the amount authorized counters 61 indicate the quantity of each type of check which can be authorized for the customer during each N-day period, and these quantities may be determined by variable factors such as the customer's check cashing history (col. 8, lines 34-40). A record of each check cashing approval transaction handled by the processor 19 during a particular day is maintained by the daily transaction log 71, which is updated by nightly update routine 72. Information from the nightly update routine is used to generate various reports and records relating to checks which were authorized and subsequently dishonored; amounts owed to subscribing merchants for approved checks which were dishonored; merchant billing for merchant use, and various statistical reports, as desired (col. 10, lines 29-56)). From all of the above, we find that Creekmore anticipates the invention set forth in claim 33. [Decision page 30 line 22 to page 32 line 11.]

In reply, the applicant submits that the rejection is improper for two reasons.

First, Creekmore does not disclose storing in a transaction database the dollar amount of purchases.

Second, Creekmore does not disclose storing in a database a time period.

Claim 34 expressly defines a database storing transaction data from prior transactions including, in association with a customer identification data including (1) dollar amount of purchases and (2) time period. Since Creekmore discloses neither limitation, the rejection of claim 33 is improper.

1. **Creekmore Does Not Disclose Claim 33's "customer database comprising stored transaction data from prior point-of-sale transactions ... in association with a customer identification ... dollar amount of purchases"**
 - a. **Creekmore Does Not Disclose Storing *Check Dollar Amounts* from "*prior ... transactions*"**

First, with respect to the storing "dollar amount of purchases" limitation, the panel's rejection alleges that Creekmore discloses storing the value of checks entered by the customer, stating that:

In addition, the transaction data includes dollar amount of purchases and the time period (the customer supplies the dollar amount of the check being presented (col. 3, lines 9 and 10; col. 11, lines 11-14); the amount authorized counters 61 indicate the quantity of each type of check which can be authorized for the customer during each N-day period, and these quantities may be determined by variable factors such as the customer's check cashing history (col. 8, lines 34-40).

None of the citations in Creekmore supports the conclusion that Creekmore discloses storing dollar amount of purchases as claimed. Column 3 lines 9-10 disclose that the customer enters the value of a check into the check verification system. However, column 3 lines 10-26 go on to explain that the information entered by the customer for the purpose of comparing it against the customer's previously authorized limits. Thus, column 3 lines 9-10 does not suggest that the check amount entered by the customer is stored, longer than is necessary for the transaction processor to perform the comparison. Thus, column 3 lines 9-10 do not suggest that the customer database stores data of a *prior transaction* that includes the value of the check entered by the customer. The panel simply misread the reference at column 3.

The panel also cited column 11 lines 11-14. However, column 11 lines 11-14 also does not support the panel's understanding. In fact, that passage expressly states that the dollar amount of the check is only stored temporarily, in "temporary storage." Column 11 lines 11-24 clarifies that the "buffer 79 for temporary storage" stores the data only until the customer entered information is ready for transmission to the transaction processor 19. Thus, column 11 lines 11-14 teaches the opposite of what the panel concluded, and column 11 lines 11-24 are consistent with the column 3 lines 9-26 disclosure that the only reason to store the customer dollar amount of the check is so that the transaction processor can verify the check.

The panel also cites column 8 lines 34-40. However, that passage discloses that the Creekmore database stores the maximum number of checks the customer is allowed to cash. That

is, Creekmore discloses "amount authorized counters 61." These counters increment each time the customer obtains from the Creekmore system authorization for a check, as explained in Creekmore at column 3 lines 1-3 ("the number of time each customer is expected to use each authorized checking function, within a predetermined time period"); column 4 lines 5-10("Each customer's application should state ... the quantities of checks which he expects to verify periodically."); column 4 lines 51-60 ("A customer master file 10 is provided containing information on customers ... including ... types and quantities of checks which the customer has indicated an intention to cash and verify with the present system"); and column 8 lines 6-13 ("The customer file 41 also contains the counter 54 which contains information on the maximum number of checks which that customer may approve with the present system, in each N-day period, and the counter 55 which records the actual number of checks which have been approved for the particular customer during that N-day period."). The counters 61 specify the "quantity of each type of check which can be authorized" (column 8 lines 35-36) similar to the maximum number counter 54. Thus, nothing in column 8 lines 34-40 suggests the customer entered value of the check longer than necessary for the transaction processor to make its credit determinations.

With respect to the storing "dollar amount of purchases" limitation, the rejection also alleges that Creekmore column 10 lines 29-56 discloses storing the value of checks entered by the customer, stating that:

A record of each check cashing approval transaction handled by the processor 19 during a particular day is maintained by the daily transaction log 71, which is updated by nightly update routine 72. Information from the nightly update routine is used to generate various reports and records relating to checks which were authorized and subsequently dishonored; amounts owed to subscribing merchants for approved checks which were dishonored; merchant billing for merchant use, and various statistical reports, as desired (col. 10, lines 29-56)).

I address each cited passage in turn.

Column 10 lines 29-56 passage in Creekmore also does not support the panel's conclusion that Creekmore discloses storing dollar amount of purchases as claimed. This passage at column

10 lines 28-31 expressly refers to the "record of each check cashing *approval* transaction," not any point of sale purchase transaction, and not any point of sale tendering of a check. The check cashing *approval* transaction is expressly disclosed in the prior text of Creekmore none of which suggests storing the value of the check after the check has been verified or rejection. Thus, the log file 71 clearly only stores the information previously disclosed in Creekmore as being stored, and that does not include the data entered by the customer of the amount of any check.

Moreover, the panel's conclusion that column 10 lines 29-56 discloses storing the customer entered value of the check past the time when the transaction processor performs its verification function is not consistent with the disclosure at column 10 lines 32-48. Column 10 lines 32-48 discloses that the log data is processed for the purpose of (1) updating the master file 10 and (2) updating the customer file 41. Creekmore expressly discloses earlier on the date stored in the master file and the customer file, and excludes any disclosure therein of storing checks. Thus, a proper reading of column 10 lines 29-48 indicates the log file does not store a value for a check. The panel also cites column 10 lines 49-56 in support of their conclusion. Column 10 lines 49-56 read as follows:

Information from the nightly update routine 72 is also typically used to generate various reports and records relating to checks which have been authorized by the present system and were subsequently dishonored, amounts owed to subscribing merchants for approved checks which were dishonored and have been purchased by the factor, merchant billing information for merchant use of the present system, and various statistical reports as desired.

That statement is consistent with the log indicating "check cashing approval transactions," and not consistent with storing the dollar amounts entered by the customer of each check approved.

First, the "used to generate reports and records relating to checks which have been authorized by the present system and were subsequently dishonored" relates to accounting for numbers of checks, not dollar amount of checks. That is consistent with storing the counts of each check approval expressly disclosed as stored in the customer file and the master file.

Second, the "used to generate various reports and records relating to ... amounts owed to subscribing merchants for approved checks which were dishonored and have been purchased by the factor" relates to reporting on customers that passed bad checks. Recall that the "factors" are "without recourse" (column 9 lines 55-56) for verified checks. The term "without recourse" means that the factor owes the merchant for the value of the check, even if the check bounces. Obviously, the factors will want to confirm that a customer's bounced check, the value of which the factor is still liable to the merchant, was in fact verified by the check verification system, and the factor can use the "various reports and records relating to ... amounts owed to subscribing merchants for approved checks which were dishonored and have been purchased by the factor" for that purpose.

Moreover, Creekmore discloses that the customer only enters the face amount of a check in some instances. "The customer supplies the system, through an input terminal, with information including his account number, his personal code, the desired type of checking function, and in some cases the dollar amount of the check being presented." Column 3 lines 6-10. Therefore, even if the dollar amount of the check entered by the customer were stored in the "record of each check cashing approval transaction" whenever such a dollar amount were entered, that information would be insufficient to define the "amounts owed to subscribing merchants for approved checks which were dishonored and have been purchased by the factor" Furthermore, if Creekmore intended to disclose logging the check amount in a log file and then to use the logged amount for "amounts owed to subscribing merchants for approved checks which were dishonored and have been purchased by the factor," as opposed to reports relating thereto, he would have not included the predicate "used to generate various reports and records relating to...." Still further, if Creekmore intended to disclose logging the check amount and to use the logged amounts for "amounts owed to subscribing merchants for approved checks which were dishonored and have been purchased by the factor," instead of reports relating thereto, he would naturally have also used the logged amounts for "amounts owed to subscribing merchants for approved checks", not just for the bounced checks. Creekmore did not disclose that concept, which also leads to the conclusion that Creekmore's reference to reports relating to accounting for checks did not intend to convey that the reports were the accounting, and it is only the accounting that would have required storage of check amounts. Further, it would have been obvious to anyone that the dollar

value entered by the customer into the check verification terminal was not a reliable quantity upon which to base payment for the value of subsequently cashed checks. Thus, it would also have been obvious to anyone reading Creekmore that the accounting for values of tendered checks would not be based upon the dollar amount of the check entered by the customer in the check verification terminal, but instead by a separate accounting by the merchant and the factor for checks presented by the merchant to the factor for payment. That is why Creekmore teaches that his check verification system prints the dollar amount entered by the customer into the check verification terminal onto the check (column 10 lines 8-10 and 23-25) such that (1) the cashier, (2) the merchant, and (3) the factor can all ensure that the check face amount was consistent with the approved amount.

Third, the "merchant billing information for merchant use of the present system" is clearly unrelated to the value of each check, and therefore does not support the panel's conclusions that the value of each check is stored in a log file. Merchant billing information, for example, may be based upon the number of checks verified by Creekmore's check verification system.

Thus, Creekmore's column 10 lines 49-56 disclosure is consistent with the Column 10 lines 29-48 disclosure which teaches that Creekmore logs the data required to update the master file and the customer file, and nothing more.

In summary, Creekmore does not expressly or inherently disclose storing in a log file the customer entered dollar amount of a check, and there is no disclosure indicating a utility for logging the dollar value of a check entered by the customer. Therefore, Creekmore does not disclose storing check dollar amounts from "*prior ... transactions*". Therefore, Creekmore does not anticipate the claimed storing in association with a customer identification "dollar amount of purchases" from "*prior ... transactions*".

2. **Creekmore Does Not Disclose Claim 33's "customer database comprising stored transaction data from prior point-of-sale transactions ... in association with a customer identification ... *time period*"**

Second, with respect to the "time period" limitation, the panel's rejection alleges that Creekmore discloses the "time period" limitation, stating that:

In addition, the transaction data includes dollar amount of purchases and the time period (the customer supplies the dollar amount of the check being presented (col. 3, lines 9 and 10; col. 11, lines 11-14); the amount authorized counters 61 indicate the quantity of each type of check which can be authorized for the customer during each N-day period, and these quantities may be determined by variable factors such as the customer's check cashing history (col. 8, lines 34-40). A record of each check cashing approval transaction handled by the processor 19 during a particular day is maintained by the daily transaction log 71, which is updated by nightly update routine 72. Information from the nightly update routine is used to generate various reports and records relating to checks which were authorized and subsequently dishonored; amounts owed to subscribing merchants for approved checks which were dishonored; merchant billing for merchant use, and various statistical reports, as desired (col. 10, lines 29-56)). From all of the above, we find that Creekmore anticipates the invention set forth in claim 33. [Decision page 30 line 22 to page 32 line 11.]

The panel's reliance upon each passage in Creekmore to disclose storing a time period in association with the customer identification, as claimed by claim 33, is misplaced, as shown below.

The panel first relies upon the disclosure of the "N-day period" in column 8 lines 34-40. However, Creekmore discloses no time data stored in the customer file or the master file. In fact, Creekmore teaches the N-day period is the periodicity of the merchant resetting the number of check counters stored in the customer's record to zero. For example, see column 4 lines 7-9 and 18-20, indicating the customer initially provides the number of checks the customer expects to cash periodically, and column 8 lines 6-40 explaining the incrementing of the counters in the customer's record. Finally, column 8 lines 41-48 expressly states that the customer's check counter are set to zero at the end of each N-day period. Thus, the N-day period does not imply

that a time period is stored in each customer record in association with the customer identification, as claimed in claim 33.

The panel next relies upon Creekmore's column 10 lines 29-56 reference to the log file 71. However, column 10 lines 29-56 does not state that the log file stores a time period in association with the customer number. Moreover, Creekmore's reference to a log file suggests quite the opposite. Creekmore teaches that its log file 71 is "processed at the end of each operating day by the nightly update routine". What is being updated? Obviously, the counters of the customers verification of checks in the system's files. Given that Creekmore discloses counting the number of each customer's checks and resetting the counters to zero every N-day period, Creekmore provides no suggestion of storing time of check transaction. Thus, there would be no reason to include time of transaction in a log file, since its purpose is to update the customer's check counters. Second, Creekmore discloses processing the log file 71 daily. Therefore, there would be no reason to save in each record a time, since the time, (daily update) is defined by the periodicity of the nightly update.

Thus, there is no disclosure in Creekmore of storing a time period in association with a customer identification, and there is no system requirement suggesting the desirability of storing a time period in association with a customer identification. Therefore, the panel's rejection is improper because Creekmore does not disclose claim 33's customer identification stored in association with a time period.


V. Support for New Claims

The new claims generally define limitations relating to the system and the databases. The system limitations are supported for example by the disclosure page 11 second full paragraph, Figure 1 showing a system schematic, and Figures 6A and 6B, and the corresponding description thereof including page 18, the first two paragraphs on page 19, and sub-section 1.4 on pages 31 and 32. The database limitations are supported for example by sub-section 2.1 (database structure) on pages 34-43, and Tables 1-3 on pages 116-120.

VI. Closure

Should the examiner have any questions, he is urged to contact the undersigned at 703-415-0012.

Respectfully Submitted,

1/4/2005
DATE


Richard A. Neifeld, Ph.D.

Registration No. 35,299

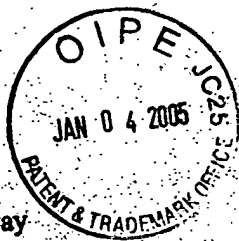
Attorney of Record

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NEIFELD IP LAW, P.C.
2001 Jefferson Davis Highway
Suite 1001, Crystal Plaza 1
Arlington, VA 22202



Tel: 703-415-0012
Fax: 703-415-0013
Email: meifeld@Neifeld.com
Web: www.Neifeld.com

THIS IS A FILING RECEIPT

NEIFELD REF: DEATON-18-USC1
In Re Application Of: DEATON et al.
Group Art Unit: 2162
Application Serial No.: 08/935,116
Filing Date: 09/22/97
Examiner: GRAVINI, S.
Title: System, Method, and Database for Processing Transactions



THE FOLLOWING HAS BEEN RECEIVED IN THE U.S. PATENT OFFICE ON
THE DATE STAMPED HEREON:

37 CFR 1.36 REVOCATION AND NEW POWER OF ATTORNEY (2 PAGES)

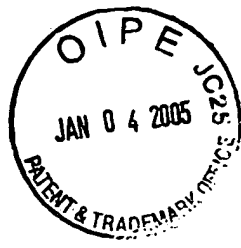
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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: David W. DEATON et al.

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FOR: System, Method, and Database for Processing Transactions

37 CFR 1.36 REVOCATION AND NEW POWER OF ATTORNEY

ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

Sir:

I hereby revoke all prior powers of attorney and grant power of attorney to the attorneys associated with Neifeld IP Law, PC 's customer number 31518 in this application. I request that all correspondence be sent to the firm of NEIFELD IP LAW, P.C. whose post office address is: 2001 Jefferson Davis Highway, Suite 1001, Arlington, Virginia 22202, whose PTO address code is 31518, and corresponding bar code number is:

31518

PATENT TRADEMARK OFFICE

CERTIFICATION UNDER 37 C.F.R. 3.73(b)

I, the undersigned, certify that I am an individual empowered to act on behalf of _____
Catalina Marketing International, Inc. - the legal assignee of the entire right,
title and interest of the above-identified application by virtue of assignments from the inventors

recorded at the following reel/frame numbers 011295/0390. I have reviewed the assignment documents, and I know that ownership of this application is vested in Catalina Marketing International, Inc.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

I am authorized to act on behalf of Catalina Marketing International, Inc.

Date: 12/13/04

Signature: 

Printed Name: Justin A. Summer

Title: Secretary

Printed: December 13, 2004 (2:37pm)

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